March 29, 2013

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket No. 01-289; FCC 13-2

EAA (Experimental Aircraft Association) is the world leader in recreational aviation. With an international membership of 177,000 people in more than 110 nations, EAA brings together aviation enthusiasts, pilots and aircraft owners in its mission to grow participation in aviation. EAA members are dedicated to sharing *The Spirit of Aviation* by inspiring people to build, fly, restore, volunteer and engage in outreach within the world of flight. EAA's programs and activities help create the next generation of aviators, preserve aviation history, protect the right to fly, and promote aviation safety and education.

On January 8, 2013 the Federal Communications Commission (FCC) published its Third Further Notice of Proposed Rule Making (Third FNPRM) inviting comments on whether the Commission should prohibit the certification, manufacture, importation, sale or use of 121.5 MHz emergency locator transmitters (ELTs) and if so, under what timeframe such a prohibition should be undertaken. This is the latest in a multi-step FCC rulemaking process to which there has been repeated opposition from the aviation community and the Federal Aviation Administration (FAA). EAA and much of the aviation industry remain opposed to any action on the part of the FCC to attempt to regulate aviation safety or aviation safety equipment, particularly in contravention with the stated position and regulatory requirements of the Federal Aviation Administration.

EAA opposes the proposed FCC regulatory action that would discontinue the sale or use of 121.5 MHz ELTs or any FCC mandate to adopt a specific aviation safety technology such as 406 MHz ELTs. The basis of our oppositions is as follows and will be elaborated upon below:

1) FCC is inappropriately interfering with the FAA's regulation of ELTs and sole mandate for the regulation of aviation safety

2) The FCC proposal directly conflicts with FAA regulations under 14 CFR §91.207, and congressional language in 47 U.S.C. §44712 stating that 121.5 MHz ELTs meet the requirement for an ELT in an aircraft
3) FCC has failed to conduct an adequate Regulatory Flexibility Act (RFA) analysis of the impact of the proposals on small businesses and entities
4) FCC has failed to conduct a cost-benefit analysis or safety-benefit analysis to determine the importance or effectiveness of the proposals
5) FCC has failed to provide a specific proposal but rather seeks comments on a range of proposals without providing a timeline for implementation or end date for any of the potential outcomes
6) The FCC proposal fails to meet its own stated goals for the rule making and/or outright conflicts with those goals
7) A ban on the certification of new 121.5 MHz ELTs already exists as a result of FAA's cancellation of the technical standard for 121.5 MHz ELTs as of May 15, 2012
8) The 406 MHz ELTs proposed to replace existing 121.5 MHz ELTs will become partially obsolete due to forthcoming technology changes and equipment mandates under the FAA Next Generation Air Traffic System (NextGen)
9) The proposed ELT equipment does little to improve the safety or survivability of general aviation aircraft. The investment would be far better spent on other safety enhancing equipment

Background

Emergency Locator Transmitters are required to be installed and maintained in functional condition on nearly all U.S. registered civil aircraft as a result of a 1973 congressional mandate. The legislation stemmed from a high-profile 1972 accident in which two congressmen crashed in the Alaska wilderness after which an extensive search and rescue effort failed to locate the accident scene. The newly mandated devices were intended to broadcast an analog distress signal after an incident or accident on the 121.5 MHz civilian aeronautical emergency frequency and/or the 243.0 MHz military frequency. Newer aeronautical and marine ELTs broadcast a digital signal on 406 MHz but may also include secondary homing transmitters on the 121.5 and 243.0 MHz bands.

In 1982 an international consortium of government agencies implemented a satellite-based monitoring system (COSPAS-SARSAT) to provide near worldwide monitoring of distress beacons. The system could detect both civilian and military analog and digital distress signals on all three of the frequency bands including 121.5 MHz. For nearly two decades, the search and rescue community lobbied the FAA and aviation industry to force a mandated change from 121.5 MHz ELTs to 406 MHz beacons but met with significant opposition, in part because of the extreme cost of a nationwide retrofit and the paucity of accidents in which ELTs actually played a role in the survivability of the event. On February 1, 2009, COSPAS-SARSAT unilaterally discontinued satellite monitoring of the analog civilian and military frequencies, choosing only to monitor digital 406 MHz beacons.

Frustrated by refusal of both U.S. and Canadian civil aviation authorities to ban the use of 121.5 MHz ELTs and force a mandated change to 406 MHz transmitters, search and rescue agencies have taken their lobbying efforts to the Federal Communications Commission and urged the discontinuance of 121.5 MHz ELTs apparently believing that the FCC would do what the aviation safety authorities would not in the two countries that have the greatest number of general aviation aircraft. Today, the FCC is proposing to ban the certification, manufacture, sale, importation and use of 121.5 MHz ELTs in contravention of standing FAA safety regulations and written comments by the FAA to pervious FCC rulemaking proposals opposing such a ban.

FAA Sole Authority Over Aviation Safety

EAA agrees that the FCC holds the authority under 47 U.S.C. §302 to regulate the technical standards of equipment that transmit radio signals, such as ELTs, to ensure that the frequency spectrum is well-managed and preclude interference between devices. However, the FCC is greatly overreaching its authority in making determinations of what equipment is appropriate for aviation safety and survivability. The FAA is the sole agency charged by Congress with reviewing and establishing aeronautical safety standards and promulgating aircraft safety equipment requirements. The FAA, through long experience with aviation safety regulation, primary responsibility for general aviation accident investigation, and familiarity with aviation operations, has the unique insight necessary to determine appropriate safety equipment standards for civil aircraft. They also have been granted sole responsibility under legislation governing aviation safety for equipment requirements, including the congressional mandate for ELTs.

Historically, the FCC has recognized the unique aeronautical safety expertise of the FAA and its sole responsibility for aviation safety regulation by deferring to that agency's decisions and policies. Notably, the FCC has given great weight to FAA comments submitted to previous rule making proposals to ban the use of 121.5 MHz ELTs, most recently in 2010 when the FCC appropriately stayed its rulemaking activities in response to FAA opposition, jurisdiction and expertise as it relates to ELTs. We maintain that nothing substantive has changed since the 2010 stay and that the facts remain the same indicating no justification for a mandatory shift to 406 MHz ELTs. EAA strongly urges the FCC to continue to defer to the expertise of the FAA and heed their urging in July 8, 2010, comments not to interfere with the regulation of aeronautical ELTs.

FCC Proposal Conflicts With Legislation and FAA Regulation

In its July 2010 comments, the Federal Aviation Administration stated that Congress explicitly found that 121.5 MHz ELTs meet the legislative intent for the carriage of an ELT in U.S. registered civil aircraft. The language in 49 U.S.C. §44712 specifically identifies 121.5 MHz ELTs as meeting the standard to satisfy the congressional

mandate, thus the FAA has stated in its comments that additional congressional authority would be required before any prohibition of 121.5 ELTs could be contemplated. Accordingly, the FAA has discontinued any efforts to mandate a transition to 406 MHz ELTs, or more specifically, discontinued efforts to promulgate any rule finding that 121.5 MHz ELTs do meet the requirement to have a functional ELT installed in an aircraft. Today under 49 U.S.C. §44712, they do. The FCC proposal purports that 121.5 MHz beacons no longer meet the definition of an ELT, but under legislation passed by Congress they clearly do and FCC is proposing action in contravention of that law.

In contemplating a proposal to ban the sale and use of 121.5 MHz ELTs, the Commission is creating a direct conflict with existing FAA regulation designed to satisfy the congressional mandate for carriage of an ELT. 14 C.F.R §91.207 permits the new installation and use of 121.5 MHz ELTs certificated under (Technical Standard Order) TSO-C91a or 406 MHz ELTs certificated under TSO-C126. It also permits the grandfathered use of ELTs meeting the older TSO-C91 with the exception that new installations after 1995 are required to meet the improved G-switch standards contained in TSO-C91a. 14 C.F.R. §91.207 specifically requires that all U.S. registered civil aircraft carry an ELT meeting <u>any</u> of these TSOs in order to operate. An FCC ban on the use of 121.5 MHz ELTs carried by the majority of the general aviation fleet would effectively ground 200,000 aircraft. We do not believe this is within the authority and purview of the FCC, nor in the public interest.

The Regulatory Flexibility Act requires that among other things, a Federal agency determine the impact of its proposed rules on small entities and determine if there are any conflicts with other legislation or regulation. The FCC has not only failed due diligence in developing its proposal as it relates to conflict with existing regulations but is proceeding with a proposed ban on 121.5 MHz ELTs after being advised by another federal agency (the FAA) that such a proposal would conflict with both federal regulation and congressional legislation. We believe that any attempt by the FCC to proceed in conflict with FAA regulation and congressional intent would be met at a minimum with disapproval by Congress and possibly challenge in federal court under the Administrative Procedures Act, 5 U.S.C §706 on the basis that the proposal is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

FCC Failed To Conduct An Adequate Regulatory Flexibility Analysis

In addition to identifying potential conflict with other government regulation, the Regulatory Flexibility Act also requires that federal agencies determine the potential impact of any proposed regulations on small businesses and entities. The FCC notice proposes a host of potential outcomes from discontinuing the future certification of new 121.5 MHz ELTs to an outright ban on their use in the existing aircraft fleet. Each of the outcomes carries with it a different operational and economic impact. While the FCC has asked for input on these impacts, the Commission has taken no

steps itself to identify or analyze the impacts as required under the Regulator Flexibility Act.

The FCC notice makes no attempt to identify or describe the number and type of small business entities that would be impacted by any or all of the range of proposed outcomes. There is no doubt that the proposal will impact businesses that design, manufacture, install and maintain ELTs, most of which fall well within the definition of small business under the Regulatory Flexibility Act. Additionally, the vast majority of the 200,000 aircraft on which these ELTs are installed are owned and operated by small businesses or individuals. There is no doubt that the FCC proposal will have a substantial impact on small entities and individuals, estimated to be a minimum of $2500 for the purchase, installation and approval of a new 406 MHz ELT. With approximately 200,000 aircraft in the U.S. registered fleet, the cumulative impact approaches $500 million.

FCC Failed to Conduct Cost-Benefit or Safety-Benefit Analysis

More disturbing than the absence of analysis concerning the impact of the FCC proposal on small business is the absence of any cost-benefit or safety benefit analysis to justify the proposals. As previously stated, ELTs are equipment mandated by Congress four decades ago in reaction to a singular accident. The effectiveness and utility of ELTs has been the subject of considerable debate ever since within the aviation community. However, because Congress took such proscriptive measures requiring a specific piece of safety equipment in U.S. registered civil aircraft, there has been no latitude to either abandon the requirement entirely or seek potentially better methods of accomplishing the same goal.

The requirement to carry, inspect, and maintain it in working order an ELT has had a significant economic impact on the general aviation community for forty years. Sadly, this investment in ELT technology does nothing to improve aviation safety but does attempt to improve the response time and location of otherwise survivable accidents. While this is a laudable goal, in practice ELTs have played a very limited role in saving lives when searching for downed aircraft. Indeed, most of the benefit of a $500 million dollar investment by aircraft owners and operators accrues to the search and rescue agencies that are pressing hardest for a mandatory transition to 406 MHz ELTs and not the end consumer.

While the FCC has failed to conduct a cost-benefit or safety analysis of its range of proposals, other government agencies have. In 2010, the National Transportation Safety Board issued a recommendation to require the use of 406 MHz ELTs. In response to this recommendation the Federal Aviation Administration highlighted some of their findings. “Before pursuing authority from Congress to require the installation of 406 MHz ELTs, we completed a cost-benefit study based on data from the years 1990-2005. The study addressed the issue of safety and cost association with the termination of satellite monitoring of 121.5 MHz ELTs. Based on the

analysis the FAA finds that the cost of equipping the general aviation aircraft and air-taxi fixed wing aircraft fleet approaches $500 million." The comments went on to state that while 406 MHz ELTs do indeed provide improved notification and potential response times by search and rescue agencies, the location of downed aircraft is rarely a determinant of survivability and thus the life or death of the accident victims.

The fact that ELTs do nothing to prevent accidents and improve general aviation safety, combined with the fact that they rarely play a part in the survival rates of accidents once they do occur, calls into question the validity of the ELT mandate in the first place. However, ELT equipage has been a matter of public law for forty years and is unlikely to go away any time soon. That said, FAA studies to date indicate that there is little safety or survivability justification for a mandatory transition to 406 MHz ELTs. The Commission has done nothing to either refute or add to that data despite bearing a responsibility to do so under the Regulatory Flexibility Act (RFA) and Administrative Procedures Act (APA).

FCC is Not Making a Concrete Proposal With Defined Impact or Timeline

The FCC in its request for public comment has not set forth a specific proposal for action on 121.5 MHz ELTs but rather has offered a very general range of potential options the Commission might pursue in a final rule. These options range from discontinuing the certification of new 121.5 MHz ELTs, to prohibition of the manufacture of new 121.5 MHz ELTs, to banning the sale and importation of 121.5 ELTs. There is also an oblique reference to banning the "use" of 121.5 MHz ELTs but there is no discussion of the timeline on which that might be implemented, whether it would be implemented at all, or any study of impact or justification for such a sweeping and costly move. Indeed, the proposal set forth in the January 8, 2013 Third FNPRM makes no specific mention that the FCC is planning to ban the use of 121.5 MHz ELTs at all.

On February 28, 2013, the Small Business Administration Office of Advocacy facilitated a meeting between representatives of the aviation community and staff from the FCC. During this meeting, aviation stakeholders asked the FCC staff to clarify the intent of the proposed rule and noted that no specific proposal had been offered up by the Commission and no cost-benefit analysis presented as part of the rulemaking record. Given that the written proposal focused on discontinuing the manufacture and sale of new 121.5 MHz ELTs the aviation stakeholders specifically asked for further clarification of the proposal and whether the FCC intends to prohibit the continued use of existing 121.5 MHz ELTs. FCC staff clarified that prohibiting the use of existing 121.5 MHz ELTs is still an issue under consideration and that a final rule could contain language that would prohibit the use of 121.5 MHz ELTs.

EAA is dismayed that the Commission would consider issuing a final rule prohibiting the continued use of 200,000 in-service aeronautical ELTs without making a specific

proposal to the public to do so and without identifying and addressing the costs, benefits, and implications of such a rule. The view presented by FCC staff in the February 28, 2013 meeting that the Commission is within its rights to issue a final rule banning the use of existing 121.5 MHz ELTs without seeking additional public comment or without presenting a specific proposal for public consideration is astounding and contrary to the tenets of federal rulemaking under the Regulatory Flexibility Act and Administrative Procedures Act. We maintain that these FCC assertions and repeated attempts to exercise authority over an area clearly in the purview of the Federal Aviation Administration, who themselves have acted fully in compliance with the RFA and APA in arriving at their decisions not to mandate a transition to 406 MHz ELTs, is overreaching on the part of the FCC.

Of considerable concern is the argument that the FCC is a stand-alone Commission and not a federal agency and thus not bound by the Administrative Procedures Act. The implication is that the FCC is acting within its rights to regulate, as it deems appropriate and without public input, in an area outside its jurisdiction. This strikes us as a blatant abuse of authority. After the recent LightSquared debacle in which the FCC was prepared to permit a commercial entity to seriously impact aviation safety by interfering with the GPS signal, and the Congressional and public fervor that erupted as a result, we are surprised and dismayed to see that the Commission continues to act in a manner inconsistent with the public interest and contrary to the views of aviation safety experts and regulators alike.

EAA maintains that if the FCC is planning to issue a final rule banning the use of existing 121.5 MHz ELTs, it should specifically state its intent to do so in a public proposal, set forth the timeline it would propose to implement such a ban, conduct full safety-benefit and cost-benefit analyses justifying the proposal, and present that full package of information for public consideration and comment. Anything less appears from the public perspective to be obfuscation of a hidden agenda and contrary to tenets of open and fair government.

FCC Proposal Fails to Meet or Conflicts With Stated Goals

The stated goals of the January 8, 2013 notice by the FCC are to:

1) Ensure that FCC rules pertaining to Aviation Communications remain up-to-date
2) Continue to further the Commission's goals of accommodating new technologies
3) Facilitate the efficient use of the aeronautical spectrum
4) Avoid unnecessary regulation
5) Enhance the safety of flight

Under this notice, the FCC is proposing to mandate the prohibition of a technology that is over forty years old (121.5 ELTs) with another proscriptive technology that is already more then twenty years old (406 MHz ELTs) that is likely to be supplanted

within this decade by another entirely differing technology (ADS-B) under the FAA NextGen program. This hardly qualifies as keeping regulations up-to-date in our view. Indeed, the proposal is being considered so late in the product life cycle as to be potentially obsolete within a few years after mandating the wholesale replacement of ELTs.

If the FCC is serious about its first two goals of maintaining up-to-date regulations and accommodating new technologies, EAA strongly recommends a performance-based approach to standard setting rather than mandating specific technologies. That said, we believe strongly that the appropriate agency for developing and mandating aviation safety standards is, and should remain, the Federal Aviation Administration and not the FCC. While FCC should most certainly play a role in ensuring that aviation communications are carried out in a manner that preserves the integrity of the aviation spectrum and that transmitting equipment does not cause interference with other radio equipment, differing technologies, or areas of the frequency spectrum, we maintain that decisions of effective means of addressing and accomplishing aviation safety remain the purview and sole responsibility of the FAA. In essence, FAA should set the performance standards for ELTs or other search and rescue related technologies and FCC should ensure that they are designed and manufactured so as to ensure integrity of the spectrum for which FCC is entrusted.

In terms of facilitating the efficient use of the spectrum as a stated goal of this notice, we fail to see how a proposal to ban the use of 121.5 MHz ELTs has any bearing on spectrum management. 121.5 MHz is the international civilian aeronautical distress frequency that is monitored by air traffic facilities, Civil Air Patrol, and many overflying aircraft. Nothing in this notice purports to change that. Further, even many 406 MHz ELTs broadcast a homing signal on 121.5 MHz and 243.0 MHz because the digital signal, while effective for satellite communication, does not permit homing devices to pinpoint the location of a downed aircraft. 121.5 MHz analog signals are still relied upon for homing in on the accident site within a specified search area as identified by a 406 MHz warning. Eliminating 121.5 MHz ELTs does nothing to alter aeronautical spectrum use and indeed 121.5 MHz will continue to be used for both emergency voice and distress beacon signals now and in the future.

One of the Commission's stated goals is to avoid unnecessary regulation. FCC Notice 13-2 is the very unnecessary regulation the Commission intends to avoid. Over a period of nearly 20 years, the Federal Aviation Administration has studied and evaluated the efficacy of 121.5 MHz and 406 MHz ELTs and their role in aviation safety. The FAA has hosted and participated in several interagency committees to study all facets of ELT use in consultation with the search and rescue agencies and aviation end users. The repeated result has been that ELTs play an insufficient role in the survivability of aircraft accidents to be able to justify the cost of wholesale replacement of existing ELTs with new 406 MHz beacons. This issue has been studied and debated for more than 20 years and repeatedly the conclusion has been the same. Now the FCC, without benefit of safety analysis, cost-benefit analysis, or

understanding of the role ELTs play in the survival rates of aviation accidents, is preparing to implement a rule that will cost the general aviation community in excess of $500 million dollars. Not only does this needlessly duplicate the work of decades of effort by a sister government agency having direct responsibility for aviation safety, but it flies in the face of all of the results of actual safety analysis and cost-benefit study. This is to us the epitome of unnecessary regulation and it indeed should be avoided.

Finally, FCC Notice 13-2 states that above all, the goal of the Commission is to enhance the safety of flight. While this is a laudable goal, we are not aware of any reference in the enabling statutes or mission of the Federal Communications Commission that outlines a role or responsibility of the FCC to enhance or even address issues of aviation safety. This is the sole purview of the Federal Aviation Administration, where experience and expertise in matters of aviation safety reside within the federal government. Congress, under the Federal Aviation Act of 1958, as amended, authorized the Federal Aviation Administration as the sole arbiter and regulator of aviation safety in the U.S. While the FAA should certainly consult with the FCC on matters affecting aeronautical frequency spectrum use and technical standards for transmitting equipment, the FAA remains the arbiters of aviation safety and the technologies and investments that contribute best to the overall goal of safe and efficient use of the national airspace system. We do not believe that the FCC should be taking on this goal, as the Commission has neither the experience, expertise, nor perspective to effectively undertake rulemaking on matters of aviation safety. We believe that the FCC is vastly overreaching its authority and competence in this regard.

Voluntary Transition Already Underway

EAA and other representative organizations of the end consumer of ELT technology have consistently opposed a mandatory transition to 406 MHz ELTs. That said, we also recognize the benefits of 406 MHz ELTs in an environment where the search and rescue community no longer monitors 121.5 MHz ELT signals via the satellite network of COSPAS-SARSAT. To that end, we have consistently encouraged our members to adopt 406 MHz technology when faced with a decision to replace older 121.5 MHz ELTs. Natural attrition, the fact that newly manufactured aircraft are delivered with 406 MHz ELTs, and industry education has resulted in a slow but steady conversion to 406 MHz ELTs though not at a rate that satisfies the search and rescue community. Today it is estimated that approximately 38,000 aircraft have been equipped with 406 MHz ELTs of which 9,000 are position-reporting beacons. That number will continue to climb and even accelerate in the coming years.

One of the proposals being contemplated by the FCC notice is to preclude the certification of any new 121.5 MHz ELTs. It is puzzling that FCC would even propose this when it is already a matter of law. Nearly a year ago on May 15, 2012, the FAA cancelled TSO C-91a effectively precluding any new 121.5 MHz ELTs from being certified and also preventing any substantive update of existing 121.5 MHz ELT

certifications. In effect, the FAA is hastening the transition to 406 MHz ELTs by ensuring that any new ELTs that are approved must meet TSO-C126 and thus broadcast on 406 MHz. No new 121.5 MHz ELTs will be approved and existing 121.5 MHz ELTs will no longer be able to be technically updated under the cancelled TSO. The only other TSO for 121.5 ELTs (TSO-C91) was cancelled in 1995. Adoption of 406 MHz ELTs will only accelerate with the passage of time. With the cancellation of TSO-C91a there is no need to regulate a wholesale replacement of 121.5 MHz ELTs. They will be replaced by attrition over time or be superseded by forthcoming NextGen technologies as discussed below.

NextGen Air Traffic System Will Diminish or Eliminate 406 MHz Benefits

As the FAA transitions the National Airspace System to the Next Generation Air Traffic Control System (NextGen) the method and accuracy of aircraft position tracking will undergo a radical shift. The bedrock of the NextGen ATC system is Automated Dependent Surveillance – Broadcast (ADS-B), which provides GPS-based position reporting a minimum of once every second to air traffic control. It also broadcasts the aircraft type and registration number thus providing the last known position of any aircraft to within one second of flight time. In many respects the performance of ADS-B in identifying the last known position of an aircraft is vastly superior to ELT technologies because it does not rely on the survivability and operability of a piece of equipment subject to impact in an accident. Failure of the ADS-B equipment will give ATC a very accurate last known position without having to rely upon the continued post-accident functioning of electronic equipment and the continued integrity of its antenna.

The FAA has mandated the adoption of ADS-B for aircraft operating in airspace that currently requires a Mode C altitude encoding transponder by 2020, though widespread adoption of this technology will begin sooner. It is estimated that by 2020, 85 percent of U.S. registered civil aircraft will be equipped with ADS-B transmitters. Apart from the fact that ELTs rarely play a role in the survivability of an aircraft accident, the Commission's effort to mandate a transition to 406 MHz ELT technologies at the same time that the civil aviation fleet is transitioning to ADS-B is unnecessary and will rapidly become obsolete.

Safety Investments Better Spent Elsewhere

Resources for improving aviation safety including training, equipment and procedures are finite. When examining aviation safety from a holistic view, regulators and industry alike take great pains to study and identify those areas where the greatest impact on safety can be achieved through intervention of one sort or another. In the realm of general aviation accidents and fatalities the top three causes are inflight loss of control, powerplant and associated system failure, and controlled flight into terrain due to weather. Combined, these three causes are directly or indirectly responsible for 62% of general aviation fatalities. In a prioritized list of hazards or events, inability to locate a downed aircraft in a timely

manner turning an otherwise survivable accident into a fatality does not even make the top twenty. In the realm of safety hazards and survivability factors it barely registers as an event.

Given the extremely limited role ELTs have played in saving lives when finding downed aircraft, there are vastly more important and life saving technologies for which general aviation could and should be investing its finite safety resources. New technologies are being proposed that have clear safety benefits such as ADS-B to assist in preventing controlled flight into terrain accidents, angle of attack indicators to assist in preventing in-flight loss of control accidents, engine monitoring systems and integrated electronic engine ignition and control to prevent powerplant failure, and eventually ADS-B-In that can bring traffic and weather data to the cockpit to help avoid mid-air collisions and flight into adverse weather conditions. These technologies and the procedures that accompany them are intended to tackle the vast majority of general aviation fatalities brought about as a result of the top three causal factors listed above.

These technologies are expensive but are being adopted by the general aviation community in the coming years. One of the greatest challenges to the adoption of new safety enhancing technology is cost and the general aviation community is struggling to find innovative ways to accelerate the adoption of these life saving technologies and defer or reduce their costs. The FCC proposal to employ finite resources toward a technology that has proven over four decades to play a very limited role in saving lives after an accident and does nothing to help prevent an accident in the first place is an unnecessary distraction and diversion of resources that could and should be used for far more successful and meaningful safety interventions. We fear that the FCC pursuit of a mandatory adoption of 406 MHz ELTs will in fact slow the adoption of technologies that will have a meaningful impact on saving lives by helping to prevent accidents in the first place.

Conclusion

EAA strongly opposes the FCC notice to discontinue the sale, installation or use of 121.5 MHz ELTs or any proposal that would mandate the use of a particular technology such as 406 MHz ELTs. The FCC goal of discontinuing the certification of new 121.5 MHz ELTs was accomplished by Federal Aviation Administration nearly a year ago with the cancellation of TSO-C91a and adoption of 406 MHz technology is already occurring on a voluntary basis as older 121.5 MHz units fail or become unserviceable. We maintain that the FCC has dramatically overreached its mandate and authority in establishing goals of improving aviation safety and that the Commission is wasting resources duplicating the efforts of the FAA which has already studied this issue for two decades and determined that Congressional action would be required to ban the use of 121.5 MHz ELTs and that there is no cost-benefit justification for mandating the adoption of 406 MHz ELTs. The FCC proposal has not been supported by safety or cost justification, is counter to existing statutes and federal regulation, conflicts with the Commission's stated goals, and potentially

diverts finite resources from the adoption of other far more important and relevant safety technologies.

Ultimately EAA believes that emergency locating capability should be predicated on performance-based standards rather than regulated proscriptive technologies. By using performance-based standards, new technologies such as ADS-B can be adapted to meet the needs of the search and rescue community and potentially vastly improve the location process rather than wedding the aviation community to decades old technologies that afford no safety and few life saving benefits to the end consumer. Regardless of whether the federal government adopts proscriptive regulations or performance-based standards, the Federal Aviation Administration is the appropriate agency for making a determination of need, identifying appropriate technologies, and adopting equipment standards and enabling regulation. While this should be done in consultation with the FCC to ensure that equipment meets standards of aeronautical spectrum integrity, the identification and adoption of technology intended to enhance aviation safety is the purview of the Federal Aviation Administration and not the Federal Communications Commission.

EAA appreciates your time and attention to this matter and we stand ready to work with the Commission or answer any additional question you may have.

Respectfully,

Douglas C. Macnair
Vice President, Government Relations